

is not a lessee of the Echo Lane Tract (“the Property”).¹ (Linder Dep. 23: 11-24.) Linder has hunted the Echo Lane Tract hundreds of times, and O’ Bryan and Beach have each participated in fifteen or more dog-drive hunts. (Linder Dep. 26: 18-22; *See* Beach Dep. 23: 13-15, attached as **Exhibit D**; *see* O’ Bryan Dep. 55: 6-10, attached as **Exhibit E**.) Although the hunting lease for the Property prohibited dog drive hunts, the owners of the Property had given Linder permission to host dog-drive hunts. (Linder Dep. 31: 3-14.) In fact, Linder called Varn Cummings to get permission. (Linder Dep. 68: 10-24.)

Linder organized the subject hunt the night before and invited only four or five people, including his daughter, son, Barry Evans (“Evans”), Bobby Gecy (“Gecy”) and Drew Darden (“Darden”). (Linder Dep. 37: 11-25; 38: 1-9.) Evans brought his girlfriend, Tiffany, and O’ Bryan. (Linder Dep. 40: 16-21.) Darden brought his college roommate, Travis. (Linder Dep. 40: 16-21.) Although Beach was not invited to the hunt, he found out about it via a radio that was used for a hunt on a different property on the day prior. (Linder Dep. 42: 21-22; 42: 23-25; 43: 1-5.) Beach did not show up for the hunt until after lunch.² (Linder Dep. 42: 8-18; O’ Bryan Dep. 14: 10-15.)

Prior to both the morning and afternoon hunts, Linder conducted a safety meeting. (Linder Dep. 45: 6-10; Linder Dep. 72: 15-24; O’ Bryan Dep. 12: 9-25; O’ Bryan Dep. 19: 7-20.) The rules of a hunt are at the discretion of the “hunt master,” which in this case would be the host of the hunt, Linder. (*See* Woodward Dep. 88: 5-10, attached hereto as **Exhibit F**; *see* Jones Dep. 41: 24-25, 42: 1-2, attached hereto as **Exhibit G**.) During the afternoon meeting, Linder

¹ For the purposes of this Motion only, the Defendants will concede that Wynn was a lessee of the Echo Lane Tract.

² Because testimony is disputed regarding this fact, for the purposes of this Motion only, the Defendants concede that Beach was present for both the morning and afternoon hunts.

instructed Beach where to stand during the hunt. (Beach Dep. 77: 12-16.) Beach was supposed to be at what is labeled No. 1 on Exhibit H, Linder was at No. 2, and O’Bryan was at No. 8. (Linder Dep. 80: 2-14; *see* Linder Dep. Pl. Ex. 2, attached as **Exhibit H**; *also see* O’Bryan Dep. Pl. Exhibit 1, attached as **Exhibit I**³.) Linder showed Beach exactly where he needed to be during the hunt. (Linder Dep. 81: 7-14.) Sometime during the afternoon hunt, Beach was inadvertently struck in the hand by a pellet shot from O’Bryan’s gun. (O’Bryan Dep. 54: 3-5.) Following the incident, Linder called over the radio and notified Evans and Tiffany, who is a registered nurse, that Beach had been struck by a pellet. (Linder Dep. 88: 7-14.) Beach opted not to go to the hospital at that time, instead going later in the evening. (Beach Dep. 46: 18-24; 47: 3-5.)

While at the hospital later that evening, Brandon Woodward (“Woodward”), the lead investigator for the Department of Natural Resources (“DNR”), spoke to Beach, who lied to him about where the incident occurred, causing Woodward to initially go to the wrong location. (Beach Dep. 48: 2-23.) When Woodward realized what happened, he notified his superior, JP Jones (“Jones”), who went to the hospital and confirmed where the accident occurred. (Woodward Dep. 49: 2-25; 50:1-3; 50: 10-14.) Following that, Jones and Woodward went to the Echo Lane Tract to rope it off. (Woodward Dep. 50: 4-7.) The following morning, an investigation was carried out by Woodward and Jones. (Woodward Dep. 56: 3-13.) Beach initiated this lawsuit on January 5, 2024, claiming that the Defendants were negligent.⁴

The instant motion follows.

STANDARD OF REVIEW

³ Exhibit I supplements Exhibit H for further reference.

⁴ Beach filed an Amended Complaint on January 17, 2024.

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCF. In ruling on a motion for summary judgment, the Court must view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party. *Byrd v. City of Hartsville*, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Rife v. Hitachi Const. Machinery Co. Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. The moving party need not support its motion with affidavits or other similar materials negating the opponent’s claim but must clearly establish by the record the absence of a triable issue of fact. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). With respect to an issue upon which the non-moving party bears the burden of proof, the moving party may discharge this initial responsibility by pointing out to the Court the absence of evidence to support the non-moving party’s case. *Id.*

After the moving party has met this initial burden, the opposing party must, under Rule 56(e), SCRCF, “do more than simply show that there is some metaphysical doubt as to the material facts” and “must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Id.* The non-moving party must show a genuine issue as to any material fact, as set forth in Rule 56(c), requiring the non-moving party show a “reasonable inference” be drawn from the evidence. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). Therefore, if there is no genuine issue as to any material fact, then summary judgment must be granted.

ARGUMENT AND CITATION TO AUTHORITY

1. *The Plaintiff's claims are barred by the Recreational Use Statute as it applies to Brandon Linder and Wynn Farms, LLC.*

Linder and Wynn Farms are protected by the Recreational Use Statute. “The Limitation of Liability of Landowners Act, commonly referred to as the Recreational Use Statute, was enacted by our legislature to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.” *Corbett v. City of Myrtle Beach, S.C.*, 336 S.C. 601, 521 S.E.2d 276 (Ct. App. 1999) (Citing S.C. Code Ann. § 27-3-10). Hunting is considered a recreational purpose under the statute. S.C. Code Ann. § 27-3-20(d). “Landowners owe ‘no duty of care to keep the premises safe’ for recreational users and need not ‘give any warning of a dangerous condition, use, structure or activity’ on the property.” *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997) (citing S.C. Code Ann. § 27-3-30). The lessee of the land is considered an owner under the statute. S.C. Code Ann. § 27-3-20(c). Liability is not limited for grossly negligent, willful, or malicious failure to guard or warn against a dangerous condition, use, structure or activity. S.C. Code Ann. § 27-3-60. The statute does not protect landowners who charge individuals for recreational use of the land. *Harris v. University of South Carolina*, 391 S.C. 518, 706 S.E.2d 45 (Ct. App. 2011).

The interpretation of the Recreational Use Statute is clear. South Carolina’s “primary rule of statutory construction is to give statutes their plain and ordinary meaning where the statute’s language is unambiguous.” *Brooks*, 327 S.C. at 406, 489 S.E.2d at 650 (citing *Adkins v. Varn*, 312 S.C. 188, 191, 439 S.E.2d 822, 824 (1993)). “In construing statutory language, the statute

must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect.” *TNS Mills, Inc. v. South Carolina Dep’t of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998). We must “ascertain and effectuate the legislative intent wherever possible.” *South Carolina Dep’t of Social Servs. V. Forrester*, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct. App. 1984). In this case, the legislative intent is clear: to “encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.” *Corbett v. City of Myrtle Beach, S.C.*, 336 S.C. 601, 521 S.E.2d 276 (Ct. App.1999) (Citing S.C. Code Ann. § 27-3-10).

There is no dispute that Linder and Wynn Farms, LLC were the lessees of the property and are therefore considered landowners under the Recreational Use Statute. (Exhibit B; S.C. Code Ann. § 27-3-20(c)). There is also no dispute that Linder hosted a dog-drive hunt on the day of the accident. (Exhibit A). Under the Recreational Use Statute, landowners owe no duty of care to keep the premises safe for recreational users and need not give any warning of a dangerous condition, use, structure or activity. Linder, however, went above and beyond this, as he conducted safety meetings prior to the morning and the afternoon hunts. (Linder Dep. 45: 6-10; Linder Dep. 72: 15-24; O’ Bryan Dep. 12: 9-25; O’ Bryan Dep. 19: 7-20). Although Beach may argue that the safety meetings were insufficient, safety meetings and the topics covered prior to a hunt are at the discretion of the hunt master, i.e. the person who organizes the hunt. (Jones Dep. 41: 24-25; 42: 1-2; Woodward Dep. 88: 5-10). Lastly, there is no dispute that Linder did not require Beach to pay a fee to hunt on the day of the accident. (Beach Dep. 72:25; 73: 1-2).

To be clear, Linder and Wynn Farms were not grossly negligent. South Carolina courts have recognized that “gross negligence” is a relative term, generally meaning the “absence of

care that is necessary under the circumstances.” *Smart by Clark v. Hampton Cnty. Sch. Dist. No. 2*, 315 S.C. 192, 195, 432 S.E.2d 487, 489 (Ct. App. 1993) citing *Hicks v. McCandlish*, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952). To prevail, a plaintiff must show that the defendants were grossly negligent in their actions or inactions regardless of the type of duty owed to a plaintiff. Therefore, a showing of simple negligence is not enough to defeat the protections of the Recreational Use Statute. Gross negligence essentially involves an “intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” *Richardson v. Hambright*, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988). This degree of negligence connotes the failure to exercise even a slight degree of care. *Wilson v. Etheredge*, 214 S.C. 396, 400, 52 S.E.2d 812, 814 (1949); *Anderson v. Ballenger*, 166 S.C. 44, 55, 164 S.E. 313, 317 (1932). Conversely, there is no gross negligence where slight care is exercised. “While gross negligence is ordinarily a mixed question of law and fact, when the evidence supports but one reasonable inference, the question is solely a matter of law. *Etheredge v. Richland County Sch. Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (2000).

In this matter, Linder held two safety meetings (one prior to each hunt). (Linder Dep. 45: 6-10; Linder Dep. 72: 15-24; O’ Bryan Dep. 12: 9-25; O’ Bryan Dep. 19: 7-20). What is discussed during the safety meetings is at the discretion of the hunt master. (Jones Dep. 41: 24-25; 42: 1-2; Woodward Dep. 88: 5-10). Further, Linder told the hunters where to stand in order to be safe during the hunts; this instruction included Beach, according to his own testimony. (Beach Dep. 77: 12-16). Therefore, the Defendants, at minimum, exercised slight care and were not grossly negligent.

For those reasons, the Defendants are entitled to judgment as a matter of law as to all causes of action.

2. *Linder's alleged breach of the Hunting Lease has no bearing on the instant lawsuit because Beach has no standing to contest the Hunting Lease.*

Beach may argue that because Linder was allegedly in violation of the lease for various reasons, including hosting a dog-drive hunt on the Property, that the analysis of the Recreational Use Statute may be affected. In particular, Beach may argue that Linder was grossly negligent, and that this led to Beach's injury. That is not the case.

"Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of contract between the defendant and a third party is not, as such, recoverable by the plaintiff. *Bob Hammond Const. Co., Inc. v. Banks Const. Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994) (citing *R.F. Burton Co. v. Southern Marine Associates, Inc.*, 130 Ga.App. 111, 202 S.E.2d 544 (1973)). The exception to the rule is if the contracting parties intended to create a direct benefit, rather than incidental or consequential, to the third party. *Bob Hammond Const. Co., Inc. v. Banks Const. Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994) (citing *Cothran v. Rock Hill*, 211 S.C. 17, 43 S.E.2d 615 (1947)).

In this case, Beach was no more than an incidental beneficiary to the contract between the Varn Cummings Trust and the Defendants to lease the Property for hunting. There is no language in the lease that mentions Beach or gives any indication that he was meant to be a direct beneficiary to the Lease. (Exhibit B).

Therefore, besides the fact that the only evidence in the record is that Linder obtained permission for dog-drive hunts on the Property, Beach has no standing to complain about any

alleged breach of the lease between the Defendants and the Varn Cummings Trust, and the Recreational Use Statute analysis is unaffected.

CONCLUSION

For the reasons outlined herein, Defendants Wynn Farms, LLC and Brandon Linder are entitled to summary judgment as to all causes of action.

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